

SUMMARY OF APPLICANTS REPRESENTATIONS.

This application for review seeks nothing more than clarity with regards to the conditions of the Licence and parity with adjacent Licensed Premises in order to promote the Licensing Objectives and lawfully protect those people living and working in the vicinity of the Alma Inn. This would not seem unreasonable.

The application arises out of the failure of the mediation process conducted by the Derbyshire Licensing Police to bring about a negotiated settlement between the Licensee and residents/other People.

It is nonetheless stressed that whilst it has become necessary to apply for a formal review, if there remains an opportunity to reach a negotiated agreement outside of the need for a hearing before a Licensing Committee, then residents/other people are more than happy to explore any such opportunity as previously.

However it should be noted that this application is made after the following key concerned residents and other people have worked in partnership with and co-operated with all authorities over a considerable length of time in the pursuit of common goals and a preferred negotiated settlement without success.

The following key concerned residents and other people who have been involved in the mediation process endorse and support this application:

NAME	ADDRESS	SIGNATURE	DATE
Stephen Skorn	1 South Street		19 June 2013
Victoria Spina	1 South St		19 June 2013
JODITH BARN	36 Derby Road		19 June 2013
Victoria Spina	1 South Street		19 June 2013
S. Fletcher	40, Derby Rd		19/06/13
ARRINGTON	14 Hallbarn Lane		19/06/13
SHERRISON	34 Derby Road		19/06/13

W.N.K. Rowley
Touchdown
3 Derby Road, Melbourne
Derby DE73 1FE
Tel

For the avoidance of doubt the application seeks the removal of conditions 1, 2,3,4,5 and 6 listed on page 92 of the report to the licensing committee for the reasons contained within the application and set out in grounds 1 - 10 that support this application.

In conjunction with the removal of these conditions the application seeks parity with the conditions at Harpurs Hotel and Restaurant and the following specific replacement conditions agreed with the Derbyshire Licensing Police and the Environmental Health Authority of SDDC.

The replacement of condition 1 with the CCTV conditions agreed with the Derbyshire Licensing Police at 1/. on page 87 of the report.

The replacement of condition 2 with appropriate, enforceable clear conditions that translate the Police Action Plan at page 70 of the report into steps that promote the licensing objectives and restrict the use of the outside areas in terms of times and the use of outside areas at the premises to a specified external consumption area for the purpose of smoking and drinking. Examples of such conditions are shown at page 88.

The replacement of condition 3 with the condition at 3/. On page 89 of the report as agreed with Mr Matt Holford of the Environmental Health Department of SDDC and the Derbyshire Licensing Police. Emails attached at X refer.

The replacement of condition 4 with appropriate, enforceable clear conditions that translate the Police Action Plan at page 70 into steps that promote the licensing objectives and restrict the use of outside areas in terms of times and the use of outside areas at the premises to a specified external consumption area for the purpose of smoking and drinking . Examples of such conditions are shown at 4/. page 88 of the report.

The replacement of condition 5 with the conditions listed at 5/. on page 90 of the report in conjunction with the attached plan at Y as agreed with the Derbyshire Licensing Police.

The replacement of condition 6 with the conditions listed at 6/. On page 90/91 of the report as agreed with Matt Holford of the Environmental Health Authority of SDDC and the Derbyshire Licensing Police Emails attached at X refer.

When considering the removal of any condition and/or imposing any replacement condition it is respectfully requested that the Licensing Committee have particular regard for the following

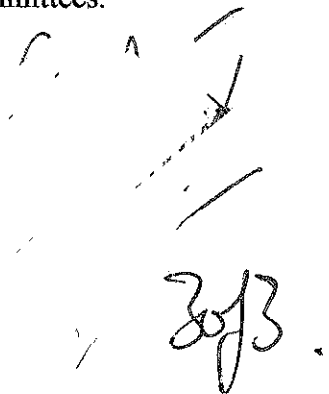
Section 10, 11, 12, 13, and 14 of the Councils own Licensing Policy

Section 1.16 and section 10.5 of the Section 182 Statutory Guidance.

Existing case law in relation to conditions imposed on licenses as highlighted by Patterson's Licensing Acts attached and in particular that arising from Crawley Borough Council v Attenborough 2006 and Developing Retail Ltd v East Hampshire Magistrates Court as detailed in the report at pages 61 and 63 of the report.

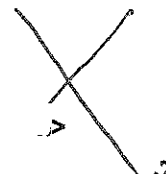
In conclusion it is also respectfully requested that whatever course of action the Licensing Committee takes with regard to the licence and the appropriate, clear and enforceable conditions requested to promote the Licensing Objectives. Then they provide to all parties full written comprehensive reasons for their decisions that address the extent to which the decisions have been made with regard to these representations and others, the Licensing Act 2003, The Licensing Policy of the Council and the section 182 Statutory Guidance to the Act. In accordance with section 23(c) of the Licensing Act, section 12.10 of the Statutory Guidance and section 18 of the Councils own Licensing Policy.

Furthermore that such reasons are given and made in accordance with the existing case law. Particular attention being paid to that arising from Hope and Glory v Westminster City Council 2011 and Little France v Ealing Borough Council 2013, - were this relates to the provision of reasons for decision by Licensing Committees.

Handwritten signature and initials, possibly 'Zof3'.



Roger Harrison <



The Alma Inn proposed cconditions.

Roger Harrison <

Thu, Nov 1, 2012 at 6:24 PM

To: Holford Matthew <Matthew.Holford@south-derbys.gov.uk>

Cc: "Morley, Richard, 2766" <Richard.Morley.2766@derbyshire.pnn.police.uk>

Dear Mr Holford

Thank you very much for your most recent email and your responses to our queries and proposed conditions. I have discussed this with PC Morley and we are now proceeding with all the agreed proposals with the licensee.

As you suggest we will revert to our original proposal at 3. For the avoidance of doubt and for the sake of clarity we are including the wording unamplified music and voice so as to avoid any future misinterpretation of our intentions in this regard.

On behalf of the residents and other people involved I would like to sincerely thank you for helping us to reach an agreed settlement that is to our mutual satisfaction and that ensures the necessary protection the original conditions were intended to provide.

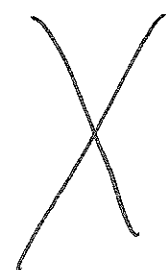
Yours sincerely

Roger Harrison.

[Quoted text hidden]



H.





Roger Harrison <[redacted]>

The Alma Inn proposed conditions.

Holford Matthew <Matthew.Holford@south-derbys.gov.uk>

Mon, Oct 29, 2012 at 5:46 PM

To: ~~rog.harrison@derbyshire.pnn.police.uk~~

Cc: Richard.Morley.2766@derbyshire.pnn.police.uk

Dear Mr Harrison,

Thank you for your clarifications and my apologies for the delay in my response - I've been away from the office for a few days.

In terms of proposal 3 I had misinterpreted your intentions. Given your clarification of the purpose of this condition I think that the original wording of this condition in your email to PC Morley dated 11th October is better and I would suggest that you revert to this.

Which day, time of day and exact location would the Environmental Health Authority of SDDC use when setting the noise limiter in accordance with the condition?

In terms of day, time of day etc to set the level this would need to be the subject of some negotiation with the premises. My current thoughts are that we (i.e SDDC Env Health) would take a number of noise readings during the period 22:30 to 24:00 on a weekday evening at the front of one of the properties from 36 to 48 Derby Road to determine the existing ambient noise levels at this location.

I would then propose that we return on an appropriate evening / night to be agreed with the premises and that the limiter be set in conjunction with the premises supervisor based on the level of music measured at the same location as above meeting that prescribed in proposal 6.

In the event that we wish the noise standard at (b) to remain in the terms of the noise limiter condition, will the Environmental Health Authority of SDDC object to its inclusion or not?

I would not object to the noise standard in (b), but I would restate my concerns about its enforceability and my underlying concern that it creates unnecessary risk within the condition for no added value. If a Licensing Panel were to ask for my opinion on this condition I would not recommend its inclusion.

It is our understanding that a breach of the noise limiter condition does not require any measurement of noise to be taken. Is this understanding correct?

This is perhaps more a question for a licensing expert, but based on my understanding it is correct that a measurement of noise would not be required to demonstrate a breach of this condition. However as an enforcement officer likely to be called upon to help enforce the condition it is very likely that as a key part of the enforcement process I would want to take noise monitoring readings at the same location used to set the limiter in order to compare and contrast the data from when the limiter was set. This would give me quantified evidence on whether the limiter is likely to be performing in a manner that meets the condition.

We further understand that any of the following instances in isolation would constitute a breach of the noise limiter condition. Is this understanding correct?

A failure to install, fit and maintain a noise limiter in the manner prescribed by the condition.

Any failure at any time to use the noise limiter to control all sources of amplified music and voice at the premises.

Any alteration to the settings of the noise limiter and its associated instruments and equipment at any time by any person, other than in accordance with the condition.

Again this is one for a licensing expert, but I would agree with your interpretation.

Regards

Matt Holford
Environmental Health Manager
South Derbyshire District Council
Direct Dial 01283 595856

From: Roger Harrison [mailto:~~rog.harrison@derbyshire.pnn.police.uk~~]

Sent: 24 October 2012 09:26

To: Holford Matthew

Cc: Morley, Richard, 2766

Subject: The Alma Inn proposed conditions.

[Quoted text hidden]

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5.



Roger Harrison <

FW: The Alma Inn

1 message

Holford Matthew <Matthew.Holford@south-derbys.gov.uk>To: ~~roger.harrison@antiquarian@gmail.com~~

Cc: Richard.Morley.2766@derbyshire.pnn.police.uk

Thu, Oct 18, 2012 at 3:31 PM

Dear Mr Harrison

I have been asked by PC Morley to respond to your revised proposed conditions sent to him on 11th October 2012.

Overall I am in agreement with the proposed conditions. However I have a couple of alterations which I think will further improve the clarity;

1. Proposed condition 3 - 'Noise generated by licensable activities other than amplified music and voice at the premises shall be inaudible at the nearest noise sensitive point'.

This condition therefore applies a noise limit to all licensable noise with the exception of noise and amplified voice. Isn't it these that there is a desire to control? Should the condition therefore include amplified music and voice, not exclude it?

2. I would suggest the removal of sub paragraph (b) from proposed condition 6. This is a condition that is generally used for controlling very low frequency noise associated with either large festivals or with dance music gatherings. It also requires a high spec noise meter that is capable of third octave band analysis. It therefore adds no value in this instance and could weaken the enforceability of the condition. The original derivation of this is from Westminster City Council in their efforts to appease complaints about outdoor events at Hyde Park. I know the guy who does the noise management for some of these events and it doesn't work. If it is left in I am concerned that the condition may only be deemed to be breached if both paragraph (a) and (b) are exceeded.

In summary I would therefore propose to make minor modifications to Mr Harrison's suggestions that I have summarised below. None of my changes in any way dilute or weaken the proposed conditions.

3. Remove this condition and replace.

Reasons; This is not a condition it is the objective of other conditions and as such cannot and does not protect residents/other people from a public nuisance. It is unenforceable and merely copied directly from the operating schedule which is unacceptable. (2.16 and 10.9 of the Statutory Guidance refer).

Proposed replacement condition;

'Noise generated by amplified music and voice at the premises from licensable activities shall be inaudible at the nearest noise sensitive point'.

Definitions for the purposes of this condition;

Inaudible-

By the A-weighted equivalent continuous noise level (LAeq) over a 5 (five) minute period with the offending noise present which shall not increase by more than 3 (three) dB as compared to the same measure from the same position & over a comparable period in the absence of the offending noise.

Nearest noise sensitive point-

One metre outside any residential property, business or place of work situated in the following roads in the vicinity of the premises; Derby Road, South Street, Alma Street and Dunncliffe Lane.

Proposal 6 is altered to read;

6. Modify this condition to state the following;

A noise limiter must be installed, fitted and maintained by the Licensee in such a manner as to control all sources of amplified music and voice at the premises. The noise limiter must be set by the Environmental Health Authority of SDDC so that any noise generated from these sources will be inaudible at the nearest noise sensitive point. The noise limiter must be located in a separate and remote lockable cabinet. The keys for this cabinet must be held by the premises supervisor/licensee only. Once the setting of the noise limiter has been established by the Environmental Health Authority in accordance with the condition, the noise limiter and its associated instruments and equipment must not be altered in any way by any person other than a representative of SDDC Environmental Health Authority in consultation with residents and other people in the vicinity of the premises.

Definitions for the purposes of this condition-

Inaudible;

By the A-weighted equivalent continuous noise level (LAeq) over a 5 (five) minute period when amplified music and voice is taking place which should not increase by more than 3 (three) dB as compared to the same measure from the same position & over a comparable period with no amplified music and voice taking place:

Nearest noise sensitive point;

One metre outside any residential property, business or place of work situated in the following roads in the vicinity of the premises; Derby Road, South Street, Alma Street and Dunncliffe Lane.

6.

Regards

Matt Holford
Environmental Health Manager
South Derbyshire District Council
Direct Dial 01283 595856

From: Morley, Richard, 2766 [mailto:Richard.Morley.2766@Derbyshire.PNN.Police.UK]
Sent: 15 October 2012 12:36
To: Holford Matthew
Subject: FW: The Alma Inn

Rich Morley

Police Constable 2766
Licensing Enforcement Officer
Derbyshire Constabulary
'D' Division Licensing Team
Prime Parkway
Chester Green
DERBY
DE1 3AB
Tel: 01332 613036 (Internal 760 3036)
E-mail: richard.morley.2766@derbyshire.pnn.police.uk
Ext. E-mail: derby.licensing@derbyshire.pnn.police.uk
Int. Group E-mail: D.Licensing
Web: <http://www.derbyshire.police.uk>

From: Roger Harrison [mailto:~~roger.harrison@derbyshire.pnn.police.uk~~]
Sent: 11 October 2012 17:01
To: Morley, Richard, 2766
Subject: The Alma Inn

Dear PC Morley

Further to our conversation of Tuesday this week and your latest email, and subject to your approval, it is proposed that the following alterations are made to the draft proposals submitted by residents in July this year. These alterations are being made in the light of proposals 3 and 6 being unacceptable to Mr Matt Holford of the Environmental Health Department of SDDC.

Proposal 3 is altered to read;

3/. Remove this condition and replace.

Reasons; This is not a condition it is the objective of other conditions and as such cannot and does not protect residents/other people from a public nuisance. It is unenforceable and merely copied directly from the operating schedule which is unacceptable. (2.16 and 10.9 of the Statutory Guidance refer).

Proposed replacement condition;

'Noise generated by licensable activities other than amplified music and voice at the premises shall be inaudible at the nearest noise sensitive point'.

Definitions for the purposes of this condition;

Inaudible-

By the A-weighted equivalent continuous noise level (LAeq) over a 5 (five) minute period with the offending noise present which shall not increase by more than 3 (three) db as compared to the same measure from the same position & over a comparable period in the absence of the offending noise.

Nearest noise sensitive point-

One metre outside any residential property, business or place of work situated in the following roads in the vicinity of the premises; Derby Road, South Street, Alma Street and Dunncliffe Lane.

Proposal 6 is altered to read;

6/. Modify this condition to state the following;

A noise limiter must be installed, fitted and maintained by the Licensee in such a manner as to control all sources of amplified music and voice at the premises. The noise limiter must be set by the Environmental Health Authority of SDDC so that any noise generated from these sources will be inaudible at the nearest noise sensitive point. The noise limiter must be located in a separate and remote lockable cabinet. The keys for this cabinet must be held by the premises supervisor/licensee only. Once the setting of the noise limiter has been established by the Environmental Health Authority in accordance with the condition, the noise limiter and its associated instruments and equipment must not be altered in any way by any person other than a representative of SDDC Environmental Health Authority in consultation with residents and other people in the vicinity of the premises.

Definitions for the purposes of this condition-

Inaudible;

(a) By the A-weighted equivalent continuous noise level (LA eq) over a 5 (five) minute period when amplified music and voice is taking place which should not increase by more than 3 (three) db as compared to the same measure from the same position & over a comparable period with no amplified music and voice taking place;

(b) The unweighted equivalent noise level (Leq) in the 63 Hz Octave band, measured using the 'fast' time constant over any 5 (five) minute period when amplified music and voice is taking place should show no increase as compared to the same measure from the same location(s) & over a comparable period with no amplified music and voice taking place.

Nearest noise sensitive point;

One metre outside any residential property, business or place of work situated in the following roads in the vicinity of the premises; Derby Road, South Street, Alma Street and Dunncliffe Lane.

Reasons; Without clarity as to which premises or location are intended to be protected by the existing condition and without any degree of specificity as to what is meant by 'reasonable' and without any security surrounding who can access the noise limiter controls and when, the existing condition is so vague as to be unenforceable. It cannot, does not and has not prevented a public noise nuisance.

For the avoidance of doubt;

This condition is put forward on the understanding that once the noise limiter has been installed and calibrated in accordance with the condition the following constitute a breach of the condition;

any failure to use the noise limiter when amplified music and voice is taking place at the premises.
any bypass of the noise limiter when amplified music and voice is taking place.
any alteration to the settings of the noise limiter its associated instruments and equipment at any time by any person other than in accordance with the condition.

Yours sincerely

Roger Harrison.

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8.

| N°1 SOUTH STREET |

BOUNDARY WALL

PLAN NOT TO SCALE - FOR IDENTIFICATION PURPOSES ONLY

7/6

RAISED PATIO / BEERGARDEN.

D

FIRE EXIT

E

8.300m

Heat detector

OH

Emergency lighting points.

DINING EXTENSION.

3.370m

5.000m

RAMP DOWN

(1 IN 12)

LANDING

FIRE EXIT

E

3.370m

Stud wall

LOBBY (STAFF)

5.450m

LOUNGE.

F

CAR PARK

BAR.

SERVEN

ENTRANCE

TOILETS

9.

E

RESTRICTED AREA FOR USE BY - LIVE BANDS, PERFORMERS AND OTHER ENTERTAINMENT.

VENT.

DERBY ROAD

passageways clear, securing floor coverings, the use of suitable floor surfaces and, finally, a prohibition upon the accumulation of rubbish etc. The council contended, *inter alia*, that a licensing authority could properly seek to 'strengthen' other legislation governing the operation of the premises without specific reasons relating to the premises in question. It also sought to argue that a licensing authority was under a duty to impose conditions consistent with an operating schedule, regardless of whether they would be required to promote the licensing objectives. The learned Deputy Judge considered that the claim raised two separate issues: first, the validity of the application for a premises licence and second, how a valid application is to be dealt with. In his judgement, following full argument on behalf of both parties, (see *Practice Direction (Citation of authorities)* [2001] 1 WLR 1001 concerning the use in the courts of judgements arising from applications attended by one party only, applications for permission to appeal and decisions on applications that only decided that the application was arguable, unless such a judgement clearly indicated that it purported to establish a new principle or to extend the present law) he held that:

- (1) s 18(2) gave a licensing authority a *power* to impose conditions consistent with the schedule; it did not impose a *duty* so to do;
- (2) if the steps were proposed in language which was general or opaque, the licensing authority might impose a condition describing more specifically what was proposed if that was necessary to promote the licensing objectives;
- (3) it was for the applicant to determine what to include in his application (*R (on the application of British Beer and Pub Association) v Canterbury City Council* [2005] EWHC 1318 (Admin), [2006] LGR 596 considered);
- (4) there was no legal obligation to impose a condition in order to promote the licensing objectives, to give effect to anything contained in the operating schedule, if the authority considered that compliance with other legislation was sufficient for that purpose;
- (5) whether additional conditions were ones which were 'necessary to promote the licensing objectives', or were adequately dealt with by existing legislation, was a matter of law and fact for the decision maker to determine.

In *Bristol City Council* the court held that in the case of each condition the conclusion of the magistrates had been one that they were reasonably entitled to reach. The court felt that it was not necessary to determine the further issue, raised in argument, whether it was necessary for an applicant to state specifically in his operating schedule that (quoting para 8.32 of the Secretary of State's statutory guidance) 'no measures will be needed to promote one or more of the licensing objectives, for example, because they are adequately dealt with by other existing legislation', because the local authority had accepted that 'the application was valid given what it did state'.

For a case involving similar considerations, see *Brighton & Hove City v City of Glasgow Licensing Board* [2011] CSIH 46.

For a case decided under the Environmental Protection Act 1990, but which could in certain circumstances have a bearing upon the determination of new applications under s 18 and applications to vary under s 35, see *St Alban's District Council v Patel* [2008] EWHC 2767; [2009] LLR 76, which was a case relating to breach of a noise abatement notice issued in relation to a pub garden. The licence allowed for the use of the garden, but one of the conditions stated that the licence holder or anyone involved in the organisation of entertainment should ensure that any noise emanating from the premises was such as would not cause annoyance or disturbance to residents in the locality. After the arrival of a new proprietor the beer garden became popular and one of the neighbours complained, resulting in the issue of an abatement notice. Following a prosecution for breach of the notice magistrates duly found that it had been contravened and that the noise coming from the garden did constitute a statutory nuisance. However the licensee was acquitted as the court accepted that he had used the 'best practicable means' to prevent or to counteract the effect of the nuisance (the statutory defence under s 80(7) of the Act). The magistrates, in reaching their decision, considered that it was significant that it was the neighbour who had known that the garden of the pub was licensed when she moved in and, although there was no suggestion

cation to state a case, leading to an application for judicial review of their refusal. The Administrative Court decided to review the substantive decision of the magistrates (*St Alban's District Council v Patel* [2008] EWHC 2767 (Admin) considered) stating that the 'defendant must establish why all other obvious or, on the face of it, practicable means are not practicable' and finding that the statutory defence had not been made out. Music could have been played indoors and not in the marquee. The court therefore decided to quash the acquittal, remit the case to the magistrates and to make a direction that they reconsider it and reach a decision in accordance with the judgment of the court.

It is that no sale by retail of alcohol may be made under the premises licence at a time when there is no designated premises supervisor in respect of the premises licence, or at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended. The second condition is that every sale by retail of alcohol under the premises licence must be made or authorised by a person who holds a personal licence. Where a premises licence authorizes the exhibition of films the licence must include a condition requiring the admission of children to the exhibition of any film to be restricted in accordance with LA 2003, s 20. Where a premises licence includes a condition that at specified times one or more individuals must be at the premises to carry out a security activity, the licence must include a condition that each such individual must be licensed by the Security Industry Authority.

Conditions. The drafting of conditions continues to cause problems to both practitioners and authorities. As s 182 Guidance has shown, difficulties can be created by the use of schedules of 'model' conditions, which all too easily lend themselves to indiscriminate use without regard to the circumstances of the individual case. It is submitted that the approach to be preferred is for those drafting conditions to abide by the fundamental rules applicable to such a process. Consideration of the relevant case law (see below) suggests that those drafting conditions should endeavour wherever possible to ensure that each individual condition:

- (1) is necessary (for the promotion of the licensing objectives);
- (2) arises from, or relates to, the proposed licensable activity;
- (3) is proportionate (to the mischief to be avoided);
- (4) does not derogate from an entitlement enshrined in statute;
- (5) is not inconsistent with the requirements of policy;
- (6) has a meaning which would be clear and unambiguous (ideally to a lay person);
- (7) is self-contained and does not require reference to some other document;
- (8) does not require the licensee to achieve some end beyond his control;
- (9) is capable of enforcement (if appropriate) in the event of a breach; and is
- (10) *intra vires* the powers of a licensing authority.

At the same time, responsible authorities must take care not to raise issues, or invite conditions, which may be adequately dealt with under existing powers. In this regard, note para 3.53 of the Guidance published by the Secretary of State which states:

'Statements of licensing policy should include a firm commitment to avoid duplication with other regulatory regimes so far as possible. For example, legislation governing health and safety at work and fire safety will place a range of general duties on the self-employed, employers and operators of venues both in respect of employees and of the general public when on the premises in question. Similarly, many aspects of fire safety will be covered by existing and future legislation. Conditions in respect of public safety should only be attached to premises licences and club premises certificates that are "necessary" for the promotion of that licensing objective and if already provided for in other legislation, they cannot be considered necessary in the context of licensing law. Such regulations will not however always cover the unique circumstances that arise in connection with licensable activities, particularly regulated entertainment, at specific premises and tailored conditions may be necessary'.

Further, in para 7.13:

'The only conditions which should be imposed on a premises licence or club premises certificate are those which are necessary and proportionate for the promotion of the "licensing objectives". If other existing law already places certain statutory



Conditions

Conditions should be:

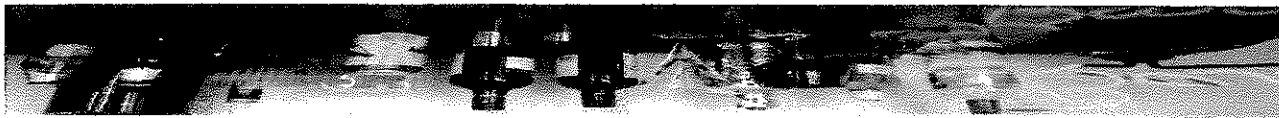
- Proportionate.
- Achievable.
- Understandable.
- Enforceable.
- Necessary/appropriate.
- Promote the licensing objectives.
- Not duplicated in other primary legislation.
- Individual and tailored to the premises



Is this a Fair Condition?

- Amplified sound from the premises shall not be clearly audible at the boundary of any noise sensitive premises

Uttlesford District Council v English Heritage
[2007] EWHC 816 (Admin) (available online
at:
<http://www.bailii.org/ew/cases/EWHC/Admin/2007/816.html>)



- Amplified sound from the premises shall not be clearly audible at the boundary of any noise sensitive premises
- Insufficiently precise. It was amended to 'music levels should not exceed LAeq 52dB over any 15 minute period at a distance of 1 metre from any residential premises'.



Please have a look at some of the licences issued in your area check the conditions are fit for purpose.

If they are not you may wish to revise them.

See: *Crawley Borough Council v Attenborough* [2006] 170 JP 593; [2006] EWHC 1278 (Admin) available online at: <http://www.bailii.org/ew/cases/EWHC/Admin/2006/1278.html>



Extract from Scott Baker L.J., at paras 6-7:

"It is important that a premises licence and any conditions attached to it should be clear.

Not just those with specialised knowledge but also an independent bystander such as a neighbour.

As a breach of licence carries criminal sanctions. Everyone must know where they stand after reading the licence and its conditions.



 [Subscribe](#)

In a land of "Hope & Glory"

10 March 2011

Following on from our recent article concerning the case of R (on application of HOPE & GLORY PUBLIC HOUSE LTD) -v- City of Westminster Magistrates Court which provided guidance on how the Magistrates' Courts should approach Licensing Appeals, we now look at the case of DEVELOPING RETAIL LTD[1]; this case provides more useful clarification and reiterates the requirement for clarity when imposing conditions upon a licence as well as considering the areas to which such conditions can apply.

The case confirms the position in Hope & Glory in that Magistrates, on appeal, are required to give weight to the exercise of discretion by the Licensing Sub-Committee, but how much weight is a matter for the Magistrates to decide in each case.

This Judicial Review followed an Appeal before South East Hampshire Magistrates' Court regarding, in turn, the grant of a Provisional Statement by Portsmouth City Council.

The original application concerned a Provisional Statement for a sea front café to the Claimant (Developing Retail Ltd). Although the Licensing Authority required the balcony at the premises to be cleared by 23:00hrs daily the Magistrates' Court went further and added a condition stating:

"All noise from the regulated entertainment at the premises should be inaudible one metre outside any noise sensitive premises."

The Claimant proposed 2 questions regarding this condition; the first proposed that the condition was so vague as to be unenforceable.

The High Court criticised the wording of the condition as there was no clarity as to the premises or location intended to be protected, and the meaning of "inaudible" was unclear. The High Court felt there had been evidence to justify a condition to protect local residents from noise, which could have been lawfully achieved by a condition that specified the particular nearby locations to be protected and described the decibel level of noise that was acceptable at those locations. The condition was quashed and the issue remitted to the Magistrates' Court to consider an alternative condition.

This accords with the advice we have been tendering to our clients historically in respect of any bespoke condition. The criminal ramifications of breaching such conditions demand clarity and this Judgement echoes similar Judgments requiring clarity in Criminal legislation.

The second question asked the Court to consider whether the fact that the licensed area (described by a red line on deposited plans) did not include the balcony prohibited the Authority from conditioning this area.

The High Court did not agree with the Claimant's arguments that conditions should be limited to the licensed area only. The Court stated:

"There was nothing in the Act which suggested that the power to impose a condition was restricted to areas where licensed activities were permitted. It was irrelevant that the plan of the licensed premises excluded the balcony."

This is a practice that many Licensing Authorities employ. The Court did not express explicitly that such conditions should relate to Licensing Activities or the effect of Licensing Activities and we await clarification on this point. Questions remain following this ruling regarding, for example, smoking conditions controlling external unlicensed areas around licensed premises i.e. the footpath outside the premises. Is it sufficient that the individuals affected by such conditions are patrons of the licensed premises even if the activity itself is not a Licensable Activity and takes place in unlicensed areas?

We shall continue to keep you up to date with relevant developments.

<!--[if !supportFootnotes]-->

<!--[endif]-->

[1] R (on the application of DEVELOPING RETAIL LTD) (Claimant) v SOUTH EAST HAMPSHIRE MAGISTRATES' COURT (Defendant) & (1) MARTIN USHER & ORS (2) PORTSMOUTH CITY COUNCIL (Interested parties) (2011)

Extract from John Gaunt & Partners
WEBSITE.

16.

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 13)

Post town

Postcode

Telephone number (if any)

If you would prefer us to correspond with you by e-mail, your e-mail address (optional)

Notes for Guidance

1. Describe the premises, for example the type of premises, its general situation and layout and any other information which could be relevant to the licensing objectives. Where your application includes off-supplies of alcohol and you intend to provide a place for consumption of these off-supplies, you must include a description of where the place will be and its proximity to the premises.
2. Where taking place in a building or other structure please tick as appropriate (indoors may include a tent).
3. For example the type of activity to be authorised, if not already stated, and give relevant further details, for example (but not exclusively) whether or not music will be amplified or unamplified.
4. For example (but not exclusively), where the activity will occur on additional days during the summer months.
5. For example (but not exclusively), where you wish the activity to go on longer on a particular day e.g. Christmas Eve.
6. Please give timings in 24 hour clock (e.g. 16:00) and only give details for the days of the week when you intend the premises to be used for the activity.
7. If you wish people to be able to consume alcohol on the premises, please tick 'on the premises'. If you wish people to be able to purchase alcohol to consume away from the premises, please tick 'off the premises'. If you wish people to be able to do both, please tick 'both'.
8. Please give information about anything intended to occur at the premises or ancillary to the use of the premises which may give rise to concern in respect of children, regardless of whether you intend children to have access to the premises, for example (but not exclusively) nudity or semi-nudity, films for restricted age groups or the presence of gaming machines.
9. Please list here steps you will take to promote all four licensing objectives together.
10. The application form must be signed.
11. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
12. Where there is more than one applicant, each of the applicant or their respective agent must sign the application form.
13. This is the address which we shall use to correspond with you about this application.

Please give a general description of the premises (please read guidance note 1)

UPC without PEL

Established public house providing food as identified on the deposited plans trading with a Supper Hours Certificate also with rights to provide "regulated entertainment" inherent in LA 1964.

These premises are entitled to sell to residents and supply their bona fide guests 24 hours a day pursuant to section 63(2) LA 1964.

* These premises are entitled to provide private entertainment. * *NATURE AND TO WHAT TIME*

2 AWP Machines under s.34 Gaming Act 1968 Permit

* These premises have the benefit of a function facility. * *LOCATION WHAT FUNCTIONS?*

* The premises have an existing external area available to patrons for consumption of off supplies. *

The current permitted licensing hours for these premises apply for on and off sales as extended by the attached Supper Hours Certificate are:

Monday to Saturday: 10:00 - 00:00

Sundays and Good Friday: 12:00 - 23:30

New Years Eve: 10:00 - New Years Day - terminal hour as existing

Christmas Day: 12:00 - 15:00 and 19:00 - 22:30 and as extended by the attached Supper Hours Certificate

This application seeks to retain the premises current entitlements as above and to specifically authorise under the Licensing Act 2003 the following activities:

1. To permit regulated entertainment comprising: Live music and amplified voice, recorded music by juke box and music systems, comperes for functions and quizzes and similar forms of entertainment, indoor pub games comprising a sporting event in the presence of an audience, exhibition of a film principally video entertainment on screens and TV screens and amusement machines.
2. To the extent that paragraph 4 below is not granted or does not permit: to permit sale of alcohol and such regulated entertainment until 02:00 the following morning on Friday, Saturday, Sunday and Monday at bank holiday weekends, Christmas Eve, Boxing Day and also to the extent that paragraph 4 below is not granted to open to the same hour on up to 20 occasions per annum at my discretion upon 7 days prior notice to the police (if required by them).
3. To permit the premises to open for licensable activities to show the broadcast of televised sporting events of national or international interest outside normal operating hours as identified in box M such opening times for this purpose to be confirmed upon 7 days prior notice in writing to the police before the premises intend to open, such notification to include the opening times and the sporting event which is to be shown.
4. To allow the sale of alcohol and such regulated entertainment as specified in the appropriate boxes below.
5. To permit provision of refreshment after 23:00

For the avoidance of doubt this application is also made for existing premises so that the provisions of schedule 8 paragraph 11 Licensing Act 2003 have effect (so that any hours granted should not be less than the hours already authorised). It is not intended that the style and method of operation of these premises should change.

EXTRACT FROM ORIGINAL
APPLICATION FOR A PREMISES LICENCE
SUBMITTED BY.

LICENSING ACT 2003

MINOR VARIATION OF PREMISES LICENCE

Application has been made by Marston's PLC, to the Licensing Authority of South Derbyshire District Council pursuant to S41A of the Licensing Act 2003 to vary the Premises Licence for the Alma Inn at Derby Road, Melbourne, Derby, DE73 1FE. The application includes the following terms:-

1. Minor Variation to approve alterations to the existing conditions on the Licence and to add additional conditions to the Licence and to define the external licensed area as detailed in the application lodged.

Full details of the Application and the drawing can be viewed at the offices of the Licensing Authority at South Derbyshire District Council at Civic Offices, Civic Way, Swadincote, Derbyshire, DE11 0AH

A responsible authority or any other person can make written representations to the Licensing Authority at any time up to 6th June 2013 (www.south-derbys.gov.uk)

It is an offence for anyone knowingly or recklessly to make a false statement in connection with a Licence Application. The maximum fine on summary conviction is £5000.00.

Dated this: 21st May 2013

John Gaunt & Partners, Solicitors

NB. THE ALMA INN DOES NOT HAVE
ANY LICENSED EXTERNAL AREA.
⇒ SEE PLAN NEXT PAGE. 19.



**South
Derbyshire**
District Council

Mr Roger Harrison
34 Derby Road
Melbourne
Derbyshire
DE73

Kevin Stackhouse
Head of Corporate Services

Civic Offices, Civic Way,
Swadlincote, Derbyshire DE11 0AH

www.south-derbys.gov.uk

Please ask for: Licensing

Phone: (01283) 221000

Fax: (01283) 595853

Typetalk: (0870) 2409598

DX 23912 Swadlincote

E-mail: licensing@south-derbys.gov.uk

Our ref:

Your ref:

Dear Mr Harrison

Date: 12th June 2013

Licensing Act 2003 – Minor Variation

Re: Alma Inn, Derby Road, Melbourne, DE73 1FE.

I write further to receiving your representation relating to the above application.

Having considered all the information available the Licensing Authority has determined that the application be refused for the following reasons:

- 1) Defects in the completion of the application form
- 2) Failure to include a statement in part 3 of the application form outlining why the variations proposed could not have an adverse impact on the licensing objectives.

For the avoidance of any doubt, the existing licence will remain unaffected.

Should you have any questions, please do not hesitate to contact the licensing section on the number above.

Yours sincerely

Stewart Broome
Senior Licensing Officer



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High court critical of lack of reasons provided by licensing sub-committee and magistrates court

The High Court, in *Little France Ltd v Ealing London Borough Council*, has quashed a decision made by a Licensing Sub-Committee, confirmed on appeal in the Magistrates' Court, to restrict a nightclub's opening hours after they failed to provide reasons for the reduction.

The Premises Licence for the Black George Pub/Nightclub in Ealing, West London was reviewed following a firearms incident near to the premises. Following the review hearing, the Licensing Sub-Committee imposed a number of restrictions on the premises including a new, earlier terminal hour for the nightclub of 2 am.

The Licensing Sub-Committee did not provide reasons for their decision to bring the terminal hour forward to 2 am. On appealing the reduction of the trading hours, in the Magistrates' Court, a submission was made that the matter should be remitted to the Licensing Sub-Committee so that a fully reasoned decision could be provided. The Magistrates declined, instead indicating that they agreed with the Sub-Committee that the terminal hour should be 2 am and accordingly dismissed the appeal. Despite statute, guidance and precedent highlighting the need for proper reasons to be provided by the Magistrates in licensing appeals, the Magistrates' Court's reasoning did not extend far beyond confirming that they felt that the decision was correct, proportionate and reasonable.

The Case Stated to the High Court included four questions, summarised as follows:

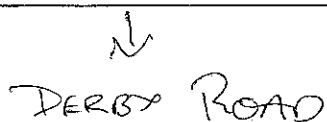
1. Where the Licensing Authority had failed to give any reasons for its decision, how should a Magistrates Court address an appeal?
2. Was the Court bound to give any reasons why it preferred the evidence adduced by the Respondents rather than that of the Appellant?
3. Did the Court apply the wrong test when limiting the hours during which licensable activities could take place?
4. Were the reasons in relation to the awards of costs ones that could have been given by any bench of Magistrates acting reasonably (in the *Wednesbury* sense)?

The High Court found in favour of the Applicant in relation to all four questions. The High Court commented that there may well be instances where a wholly unreasoned decision might be correct, but that the Magistrates' Court on appeal could not simply endorse such a decision; it had to provide reasons of its own. The Magistrates' Court had failed to show how they deemed the restriction on the terminal hours was necessary. As a result, it failed to apply the correct test.

The High Court, in varying the decision of the Magistrates' Court, committed the matter back to the Licensing Sub-Committee. Substantial costs were awarded against the Local Authority in favour of the Applicant. It is to be hoped, following this case, that both Licensing Sub-Committees and Magistrates will give much more thought to providing full and clear reasons having regard to the nature of the issues and the evidence given, as per the case of *R (on the application of Hope & Glory Public House Ltd.) -v- City of Westminster Magistrates Court (2011) EWCA Civ 31*

Tweet { 1 }

7 X 2 INCH



BLACK LINE DENOTES LICENSED AREA

N.B. 'BEER GARDEN' AND 'CAR PARK' UNLICENSED.